

## SPECIAL USE PERMIT

<b>FILE NO.</b>	<b>SP17-009</b>
<b>LOCATION OF PROPERTY</b>	Located at the northwesterly corner of East Santa Clara Street and North 5 <sup>th</sup> Street (APNs: 467-20-008, -009, -010, -013, -014, 082, -083, -086, and -087)
<b>ZONING DISTRICT</b>	DC Downtown Primary Commercial
<b>GENERAL PLAN DESIGNATION</b>	Downtown
<b>PROPOSED USE</b>	Special Use Permit to allow the demolition of an approximately 5,574 square foot building, the removal of nine trees, four of which are ordinance sized ranging from 59 to 78 inches in circumference, and the construction of two 28-story residential towers to include 298 residential units in the west tower and 312 residential units in the east tower with three levels of underground parking and four levels of above ground parking, to allow six commercial condominiums to include approximately 14,381 square feet of ground floor commercial uses and up to 24,693 square feet of flex/office space on a 1.4 gross acre site.
<b>ENVIRONMENTAL STATUS</b>	Addendum to the Downtown Strategy 2000 EIR (Resolution No.72767), the Envision San Jose 2040 General Plan (Resolution No. 76041) and the Envision San Jose 2040 General Plan Supplemental EIR (Resolution No. 77617).
<b>APPLICANT/ADDRESS</b>	SJSC Properties, LLC 60 South Market Street, Suite 450 San Jose, CA 95113
<b>OWNER/ADDRESS</b>	SJSC Properties, LLC 60 South Market Street, Suite 450 San Jose, CA 95113

The Director of Planning, Building, and Code Enforcement determines, concludes, and finds as following for this proposed project:

1. **Site Description and Surrounding Uses.** The project site is located at the north side of East Santa Clara Street between North 4<sup>th</sup> Street and North 5<sup>th</sup> Street. The project site is currently comprised of nine (9) parcels. The existing site contains a car wash building and surface parking lots.

The project site is surrounded by a CG Commercial General zoned property and an R-M Multiple Residence District zoned property to the north and CG Commercial General zoned property to the south. To the east and west, the properties are zoned DC Downtown Primary Commercial. The project site is bounded by a public parking garage to the north, a church, residential uses and a theater to the east, a gas station and a surface parking lot to the east, and City Hall to the south.

The project site is listed as an Identified Site/Structure on the Historic Resources Inventory under 21 North 5<sup>th</sup> Street (APN: 467-20-010). Staff provided an update to the Historic Landmarks Commission at the Historic Landmarks Commission meeting on February 2, 2017. Staff stated that after reviewing the Civic Center Environmental Impact Reports and the DPR form that was prepared for the project, it is unclear why the project site was placed on the Historic Resources Inventory. The DPR form concluded that the site does not meet the threshold for listing on the City Historic Resources Inventory (with a tally of 26). Staff will bring this back to the Historic Landmarks Commission as a clean-up item to remove the site from the Historic Resources Inventory.

2. **Project Description.** This is a Special Use Permit to allow the demolition of an approximately 5,574 square foot existing building, the removal of nine trees, four of which are ordinance sized ranging from 59 to 78 inches in circumference and the construction of two 28-story residential towers to include 298 residential units in the west tower and 312 residential units in the east tower with three levels of underground parking and four levels of above ground parking, to allow six (6) commercial condominiums which includes approximately 14,381 square feet of ground floor commercial uses and up to 24,693 square feet of flex/office space.

The project proposes an alternative scenario to the third and fourth floor flex/office space. This alternative involves removing parking spaces and drive aisles to accommodate additional flex/office square footage, approximately 24,693 square feet. Approximately 73 off-street parking spaces would be reduced to accommodate the additional flex/office square footage.

Under the provisions of Section 20.175.040 of the San Jose Municipal Code, a Special Use Permit is required for a commercial condominium. Under the provisions of Section 20.100.610 of the San Jose Municipal Code, a Site Development Permit is required for the construction of a building or structure on any site. Permits may be reviewed and acted on in a unified process, pursuant to Section 20.100.140 of the San Jose Municipal Code.

3. **General Plan Conformance.** The Project is consistent with the General Plan in that the Project is consistent with the site's Envision San Jose 2040 General Plan Land Use / Transportation Diagram designation of Downtown which allows residential and commercial uses that serve the community. The General Plan land use designation of Downtown allows a maximum density of 800 dwelling units per acre. The project is proposing 610 dwelling units on a 1.4 gross acre site. Furthermore, the General Plan encourages ground floor commercial uses for residential projects and the project incorporates approximately 14,304 square feet to 14,381 square feet of ground floor commercial uses along the East Santa Clara Street frontage, North 5<sup>th</sup> Street and North 4<sup>th</sup> Street.

The project is also promotes the following policies of the General Plan:

- a. **Major Strategy # 3 Focused Growth:** A Major Strategy of the Envision General Plan is to focus new growth capacity in specifically identified "Growth Areas," while the majority of the City is not planned for additional growth or intensification. This approach reflects

the built-out nature of San José, the limited availability of additional “infill” sites for development compatible with established neighborhood character, and the emphasis in the Plan Vision to reduce environmental impacts while fostering transit use and walkability.

*The Downtown is identified as a Growth Area in the General Plan. The project proposes to significantly intensify the existing site to construct two 28-story residential towers with ground floor commercial uses and flex/office uses on a portion of the third and fourth floor.*

- b. Major Strategy #9 Destination Downtown: Downtown San José is the cultural heart of San José and it provides employment, entertainment, and cultural activities more intensely than in any other area. The Downtown also consists of valuable historic resources, buildings with distinctive architecture, and unique neighborhoods where residents have convenient access to urban activities and amenities. As San José’s largest and most vibrant urban area, Downtown contributes towards the positive identity of the City to the region, the nation and abroad.

*The project contributes to this major strategy by introducing additional residential and commercial uses to activate this edge of downtown.*

- c. Commercial Design Policy CD-6.6: Promote development that contributes to a dramatic urban skyline. Encourage variations in building massing and form, especially for buildings taller than 75 feet, to create distinctive silhouettes for the Downtown skyline.

*The project is a maximum of 298 feet in height and incorporates an angled winged roof with various materials (e.g. composite metal cladding, metal panel with kynar finish) and recessed and surface mounted lighting to contribute to the downtown skyline.*

*Furthermore, the towers at the 27<sup>th</sup> story are sculpted to provide for an approximately eight foot and eight inches setback from the 26<sup>th</sup> floor. This allows for further definition and emphasis on the angled winged roof.*

- d. Downtown Policy CD-6.2: Design new development with a scale, quality, and character to strengthen Downtown’s status as a major urban center.

*The project overall is being developed at a scale common and expected in urban environments. While the 28-story residential towers relates to downtown overall with regards to size and massing, the ground floor commercial space relates to the pedestrian user by incorporating floor to ceiling glass doors and windows, thus allowing for transparent corners. Additionally, the scale of the building at the ground floor is pedestrian scaled as it provides for shelter through cantilevering the third floor flex/office space over the private walkway and by incorporating a horizontal metal panel band to provide a visual break.*

- e. Downtown Policy CD-6.1: Recognize Downtown as the most vibrant urban area of San Jose and maximize development potential and overall density within the Downtown.

*The project proposes two 28-story residential towers with ground floor commercial uses and additional commercial uses on the third and fourth floor. The project maximizes the development potential of the site, through a number of restraints such as the height limitations established by the Federal Aviation Administration. The project is intensifying the site and urbanizing this edge of Downtown. The building footprint and towers’ envelope maximizes the site’s boundaries while providing for active ground-floor space along East Santa Clara, North 4<sup>th</sup> and North 5<sup>th</sup> Street to enhance the urban environment.*

- f. Downtown Goal LU-3.1: Provide maximum flexibility in mixing uses throughout the Downtown Area. Support intensive employment, entertainment, cultural, public/quasi-public, and residential uses in compact, intensive forms to maximize social interaction; to serve as a focal point for residents, businesses, and visitors; and to further the Vision of the Envision General Plan.
- g. Downtown Goal LU-3.4: Facilitate development of retail and service establishments in Downtown, and support regional- and local-serving businesses to further primary objectives of this Plan.

*Analysis for LU-3.1 and LU-3.4: The project proposes ground floor commercial uses as well as commercial uses on the third and fourth floor. The ground-floor commercial uses are designed at a depth from 38 feet and 10 inches to 83 feet and six inches. The commercial uses located on the third and fourth floor are envisioned to be used as flex/office space. The ground floor commercial uses are equipped with a grease interceptor and double-height ceilings to allow for maximum flexibility for potential tenants.*

- 4. **Zoning Ordinance Compliance.** The Project is consistent with the regulations of the Zoning Ordinance in the following manner:
  - a. **Setback Requirement.** Properties located in the DC Zoning District shall not be subject to any minimum or maximum setback requirements. The project proposes a setback range of four feet to 16 feet from East Santa Clara Street, a zero to five foot five inches setback from North 5<sup>th</sup> Street and a zero to a 12 foot setback from North 4<sup>th</sup> Street.
  - b. **Height Requirement.** Pursuant to Section 20.70.200 of the San Jose Municipal Code, properties located in the downtown zoning districts shall only be subject to the height limitations necessary for the safe operation of the San Jose International Airport. Furthermore, no building or structure, together with any equipment or objects attached to such building or structure, shall be permitted of a height that exceeds the elevation restrictions prescribed under Federal Aviation Regulations Part 77, as amended, unless the proposed height is specifically reviewed in an aeronautical study prepared by the Federal Aviation Administrative in accordance with such federal regulations and the study concludes that the proposed building or structure does not constitute an obstruction or hazard to air operations.

The project is proposing a maximum height of 298 feet on both towers.

On May 6, 2016, the Federal Aviation Administration issued a Determination of No Hazzard to Air Navigation stating that the structure would have no substantial adverse effect on the safe and efficient utilization of the navigable airspace by aircraft or on the operation of air navigation facilities. Therefore, the project complies with the height requirement of the Zoning Ordinance.

- c. **Parking Requirement.** Pursuant to the Downtown Zoning Regulations contained in the Zoning Ordinance (specifically Table 20-140), one off-street parking space is required per residential unit. Office uses require two and one-half parking spaces per 1,000 square feet and no vehicular parking is required for retail uses within the DC Downtown Zoning District.

The project proposes 610 residential units, approximately 14,381 square feet of retail uses and approximately 8,503 square feet of flex/office uses. The residential component requires 610 off-street parking spaces and the flex/office component requires 21 off-street



parking spaces. The parking requirement for the project is 631 off-street parking spaces and the project provides 708 off-street parking spaces. Based on a market analysis provided by the applicant, most projects in downtown are parked at a ratio of 1.24. The project is parked at a ratio of 1.15 (utilizing the 708 off-street parking figure). The project is in compliance with the parking requirements of the Zoning Ordinance.

As discussed previously, the project proposes an alternative scenario which includes 610 residential units, approximately 14,304 square feet of retail and approximately up to 24,693 square feet of flex/office uses. This scenario would require 610 off-street parking spaces for the residential component and 62 off-street parking spaces for the flex/office component, bringing the parking requirement to 672 parking spaces. With this scenario, 73 off-street parking spaces are lost to accommodate the additional flex/office square footage, thus, the total available parking on-site is 635 parking spaces. This leaves a shortfall of 37 off-street parking spaces and is a 5.5% reduction in parking. This reduction in parking can be allowed pursuant to Section 20.90.220(A) of the San Jose Municipal Code. A reduction of up to 20% may be allowed if the project is located within 2,000 feet of a proposed or existing rail station or bus rapid transit station and if the project provides bicycle parking in conformance with the Zoning Ordinance. The project is located approximately 1,200 feet of an existing rail station (St. James South, located on North 2<sup>nd</sup> Street between East St. James and East St. John Streets) and approximately 120 feet to an existing bus rapid transit stop (located on the northeast corner of East Santa Clara Street and North 5<sup>th</sup> Street). The project is also located along the future BART corridor on East Santa Clara Street. As described in the Bicycle Parking Requirement section below, the project is providing more bicycle parking spaces than required by the Municipal Code. Therefore, the project's alternative scenario complies with the parking requirements of the Zoning Ordinance.

- d. **Bicycle Parking Requirement.** Pursuant to Section 20.70.485 of the San Jose Municipal Code, the number of required bicycle parking spaces shall be set forth in Chapter 20.90, except uses in Chapter 20.70 that do not require any off-street parking for motorized vehicles.

Table 20-210 contained in Section 20.70.060 requires one bicycle parking space per four living units. Table 20-190 requires one bicycle parking space per 4,000 square feet of floor area for office. Retail uses located in the DC Zoning District do not require any off-street vehicular parking spaces, therefore, based on Section 20.70.485 of the San Jose Municipal Code, the retail component must provide two short-term bicycle parking spaces and one long term bicycle parking space.

Based on 610 residential units, approximately 8,503 square feet of flex/office and the retail use, 158 bicycle parking spaces are required. Based on 610 residential units, approximately 24,693 square feet of flex/office, and the retail use, 162 bicycle parking spaces are required.

The project proposes 165 to 168 bicycle parking spaces, therefore, the project complies with the bicycle parking requirement as per the Zoning Ordinance.

- e. **Off-street Loading Requirement.** Pursuant to Section 20.70.430 of the San Jose Municipal Code, retail and commercial stores and shops, restaurants, bars and drug stores greater than 10,000 gross floor area and less than 30,000 gross floor area shall provide one loading space. Additionally, pursuant to Section 20.70.435 of the San Jose Municipal Code, multiple dwelling residential uses of five hundred units or more shall provide at least three off-street loading spaces. The office component does not require any off-street loading spaces.

The project requires a total of four loading spaces. The project is proposing two residential loading areas on-site accessible from North 5<sup>th</sup> Street and one commercial loading zone on North 5<sup>th</sup> Street totaling three loading spaces.

Pursuant to Section 20.70.450 of the San Jose Municipal Code, the Director may authorize the reduction of two on-site loading spaces to one on-site loading space if the Director finds that sufficient on-street loading space exists to accommodate circulation and manipulation of freight. Additionally, the director may reduce the number of off-street loading spaces based on the available loading space within the public right-of-way.

There is sufficient loading are within the right-of-way, and therefore, the project can utilize this reduction and provide three loading spaces.

- f. **Commercial and Industrial Common Interest Development.** Pursuant to Section 20.175.042(C) of the San Jose Municipal Code, the minimum unit size for nonresidential condominium units shall be 750 square feet. The project proposes six commercial condominiums out of an approximate minimum of 22,884 square feet and an approximate maximum of 39,074 square feet of commercial uses.
5. **Downtown and Residential Design Guidelines.** Pursuant to the Downtown Design Guidelines, the project will provide ground floor commercial uses and has a distinctive base, middle and top. The base of the building includes the two-story ground floor retail with storefront glazing and a well-defined third and fourth floor flex/office space with distinctive architectural edges. The third and fourth floor flex/office space includes strong horizontal and vertical banding elements and play mullions in the glazing. The corner base elements is integrated into the five-story lobby elements to connect the base of the building into the towers. The base element as a whole is nestled into the towers.

The towers act as the middle and are broken up into smaller vertical elements with a combination of vertically aligned glazing elements and staggered balconies from the elevation facing East Santa Clara Street. Furthermore, the interior portions of the tower have been treated with smoothed glazing and a curved finish. The interior portions of the tower contain vertically aligned glazing on a curved plane and vertically aligned balcony openings at the interior.

The top of the tower are treated with a winged roof element that incorporate various materials to provide emphasis and definition to the angled portions.

The Residential Design Guidelines state private open space should be provided at a minimum of 60 square feet per unit and common open space should be provided at a minimum of 100 square feet per unit. A reduction in the common open space requirement may be considered if the project is located in very close proximity to a public park. The project provides approximately 39,144 square feet of private open space when 36,600 square feet is required. The private open space is provided by balconies in 336 residential units. The project also provides approximately 56,082 square feet of common open space when 61,000 square feet is required. The common open space is provided level five podium and on both roofs. The project site provides a surplus of private open space of 2,544 square feet and the project is located within close proximity of St. James Park. Therefore, the common space requirement can be reduced. Because the project provides a surplus of private open space and is located within close proximity of St. James Park, open space is satisfied.

6. **Environmental Review.** The environmental impacts of this project were addressed by three Environmental Impact Reports: the Downtown Strategy 2000 Final Program EIR adopted by City Council Resolution No. 72767 on June 21, 2005, the Final Program EIR entitled “Envision San Jose 2040 General Plan” (GP2040) adopted by City Council Resolution No. 76041 on November 1, 2011, and the Supplemental EIR to the GP2040 adopted by City Council Resolution No. 77617 on December 15, 2015. The proposed project is eligible for an addendum pursuant to CEQA Guidelines §15164, which states that, “A lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in CEQA Guidelines §15162 calling for preparation of a subsequent EIR have occurred.”.
7. **Site Development Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Site Development Permit, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.
- a. The Site Development Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and area development policies.  
*As described above, the Site Development Permit is consistent with and will further the policies of the General Plan. The project is not located in a Specific Plan Area or in any Area Development Policies.*
- b. The Site Development Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project.  
*As described in the Zoning Ordinance compliance section above, the project conforms to the zoning code and all other provisions of the San Jose Municipal Code. The project conforms to the zoning code with to the setback, height, vehicular and bicycle parking and commercial common interest development regulations.*
- c. The Site Development Permit, as approved, is consistent with applicable city council policies, or counterbalancing considerations justify the inconsistency.  
*The project is consistent with the Public Noticing and Public Outreach City Council Policies. The project had a community meeting with a noticing radius of 500 feet on November 21, 2016 at City Hall in the Wing Room. Furthermore, the project has had the three on-site signs posted on the project since the formal submittal of the application. The project has been noticed for public hearing to a radius of 500 feet, consistent with the Public Outreach City Council Policy.*
- d. The interrelationship between the orientation, location, and elevations of proposed buildings and structures and other uses on-site are mutually compatible and aesthetically harmonious.  
*The residential uses and commercial uses are designed to function harmoniously. Although the project has a number of uses (i.e. residential, commercial, flex/office, open space) and different users, the overall architectural language and expression is cohesive. These uses are compatible and well integrated with each other.*
- e. The orientation, location and elevation of the proposed buildings and structures and other uses on the site are compatible with and are aesthetically harmonious with adjacent development or the character of the neighborhood.

*The project is compatible and aesthetically harmonious with the character of the neighborhood in that the scale of the project relates to City Hall (18-stories) and other lower rise towers (Vintage Tower Apartments, 12-stories; Senior Apartments on North 3<sup>rd</sup> Street, 10-stories). Furthermore, properties with a Downtown zoning and General Plan designation are expected to include high-density developments such as this.*

- f. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*As described in the Addendum that was prepared for the project, the project does not have any impacts on the environment in which cannot be mitigated.*

- g. Landscaping, irrigation systems, walls and fences, features to conceal outdoor activities, exterior heating, ventilating, plumbing, utility and trash facilities are sufficient to maintain or upgrade the appearance of the neighborhood.

*The project proposes to provide additional landscaping than what is currently existing by providing additional street trees and incorporating landscaping on the 5<sup>th</sup> floor in the amenity area as well as the roofs of both towers. The project, as a whole, is enhancing the neighborhood by improving the sidewalks on the project's frontage, installing street trees, providing additional retail square footage and constructing a new, architecturally enhanced building. The project incorporates all these elements on the project site. All utility facilities are fully screened and contained on-site.*

- h. Traffic access, pedestrian access and parking are adequate.

*The project is served by East Santa Clara Street, North 5<sup>th</sup> Street and North 4<sup>th</sup> Street. Vehicular access is taken off North 5<sup>th</sup> Street and North 4<sup>th</sup> Street, with the west tower having access off North 4<sup>th</sup> Street and the east tower, retail and commercial uses having access of North 5<sup>th</sup> Street. Pedestrian access to the project is provided on East Santa Clara Street, North 5<sup>th</sup> Street and North 4<sup>th</sup> Street. The third floor flex/office space can be accessed from East Santa Clara Street.*

*As described in the Zoning Ordinance compliance section above, the project is proposing a minimum of 635 off-street parking spaces and a maximum of 708 off-street parking spaces. The parking requirement for the project based on 610 residential units, approximately 14,381 square feet of retail uses, and approximately 8,503 square feet of flex/office uses, is 631 off-street parking spaces. In this scenario, the project would be providing 708 parking spaces, thus meeting the off-street parking requirements as required by the San Jose Municipal Code. The parking requirement for the project based on 610 residential units, approximately 14,381 square feet of retail uses and approximately 24,693 square feet of flex/office is 672 parking spaces. In this scenario, the project would be providing 635 off-street parking spaces, thus resulting in a parking shortage of 37 off-street parking spaces. This parking reduction can be accommodated pursuant to Section 20.90.220, which allows a reduction of up to 20% if the project is located within 2,000 feet of a proposed or an existing rail station, and if the project provides bicycle parking spaces in conformance with the requirements of Table 20-90 of the San Jose Municipal Code. The project is located approximately 120 feet from an existing Bus Rapid Transit line (located on the northeast corner of East Santa Clara Street and North 5<sup>th</sup> Street) and approximately 1,200 feet an existing rail station (St. James South light rail stop). The project is also providing 165 to 168 bicycle parking*



*spaces when 158 to 162 bicycle parking spaces are required. Therefore, the project satisfies the parking requirement of the San Jose Municipal Code.*

8. **Special Use Permit Findings.** Chapter 20.100 of Title 20 of the San Jose Municipal Code establishes required findings for issuance of a Special Use Permit for the proposed commercial condominiums, which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.
- a. The Special Use Permit, as approved, is consistent with and will further the policies of the General Plan and applicable Specific Plans and area development policies; and  
*As described above, the project is consistent with and will further the policies of the General Plan. The project is not located in any Specific Plan or area development policies.*
  - b. The Special Use Permit, as approved, conforms with the zoning code and all other provisions of the San José Municipal Code applicable to the project; and  
*As described in the Zoning Ordinance compliance section above, the project conforms to the zoning code and all other provisions of the San Jose Municipal Code. The project conforms to the zoning code with regard to the setbacks, height, parking and commercial common interest development regulations.*
  - c. The Special Use Permit, as approved, is consistent with applicable City Council policies, or counterbalancing considerations justify the inconsistency; and  
*The project is consistent with the Public Noticing and Public Outreach City Council Policies. The project had a community meeting with a noticing radius of 500 feet on November 21, 2016 at City Hall in the Wing Room. Furthermore, the project has had the three on-site signs posted on the project since the formal submittal of the application. The project has been noticed for public hearing to a radius of 500 feet, consistent with the Public Outreach City Council Policy.*
  - d. The proposed use at the location requested will not:
    - 1) Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
    - 2) Impair the utility or value of property of other persons located in the vicinity of the site; or
    - 3) Be detrimental to public health, safety, or general welfare; and*The commercial condominiums will not adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area or impair the utility or value of property of other persons located in the vicinity of the site or be detrimental to public health, safety, or general welfare because the commercial condominiums divide air space within the project site.*
  - e. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate the use with existing and planned uses in the surrounding area; and  
*The proposed project would be adequately served by the proposed driveway widths and existing street connections. The project will be served by North 5<sup>th</sup> Street, North 4<sup>th</sup> Street and East Santa Clara Street, with vehicular access off North 4<sup>th</sup> Street and North 5<sup>th</sup> Street.*

*Access to the west tower will be from North 4<sup>th</sup> Street and access to the retail, office and east tower will be from North 5<sup>th</sup> Street. The existing streets and utilities would be of sufficient capacity to serve the proposed residential, commercial and office use.*

f. The proposed site is adequately served:

- 1) By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate; or by other forms of transit adequate to carry the kind and quantity of individuals such use would generate; and
- 2) By other public or private service facilities as are required.

*The project site is served by East Santa Clara Street, North 5<sup>th</sup> Street and North 4<sup>th</sup> Street, with vehicular access taken off North 5<sup>th</sup> Street and North 4<sup>th</sup> Street. A Traffic Operational Analysis was prepared for the project. The Traffic Operational Analysis states that projects located in the Downtown Core are exempted from level of service standards. With incorporation of transportation related improvements and modifications, the project would be in conformance with the General Plan Goals for the Downtown Strategy Plan. The sanitary sewer mains have adequate capacity to serve the proposed development.*

- g. The environmental impacts of the project, including but not limited to noise, vibration, dust, drainage, erosion, storm water runoff, and odor which, even if insignificant for purposes of the California Environmental Quality Act (CEQA), will not have an unacceptable negative affect on adjacent property or properties.

*As described in the Addendum that was prepared for the project, the project does not have any impacts on the environment in which cannot be mitigated.*

9. **Commercial and Industrial Common Interest Development Findings.** Chapter 20.175 of the San Jose Municipal Code establishes required findings for a Commercial and Industrial Common Interest Development which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. The proposed common interest development will not adversely impact the economic viability of large-scale commercial and industrial uses in the vicinity of the development, or in the city as a whole;

*The commercial uses located in the vicinity will not be adversely impacted by the project because the proposed mixed-use development will not prohibit or hinder the ability to create other common interest developments in the area.*

- b. The proposed common interest development includes sufficient provisions for governance, funding and capitalization, and enforcement mechanisms to insure that the common area continues to be adequately and safely maintained and repaired for the life of the common interest development; and

*Prior to issuance of the Final Map, the project will be required to provide sufficient evidence demonstrating the common area will be adequately and safely maintained and repaired for the life of the project. The project will also be required to provide information related to the creation of a Homeowner's Association and/or Maintenance District for the maintenance of the common area.*

- c. The proposed common interest development includes sufficient provisions for the retention of such common areas for the use of all owners of separate interest therein.

*Prior to issuance of the Final Map, the project will be required to demonstrate that the common area will be retained as common area and provide information related to the creation of a Homeowner's Association and/or Maintenance District for the maintenance of the common area.*

**10. Evaluation Criteria for Demolition.** Chapter 20.80 of the San Jose Municipal Code establishes evaluation criteria for issuance of a permit to allow for demolition. These criteria are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. The failure to approve the permit would result in the creation or continued existence of a nuisance, blight or dangerous condition;
- b. The failure to approve the permit would jeopardize public health, safety or welfare;
- c. The approval of the permit should facilitate a project which is compatible with the surrounding neighborhood;
- d. The approval of the permit should maintain the supply of existing housing stock in the City of San Jose;
- e. Both inventoried and non-inventoried buildings, sites and districts of historical significance should be preserved to the maximum extent feasible;
- f. Rehabilitation or reuse of the existing building would not be feasible; and
- g. The demolition, removal or relocation of the building without an approved replacement building should not have an adverse impact on the surrounding neighborhood.

*The demolition of the existing car wash building will facilitate the construction of two 28-story residential towers that will enhance and is compatible with the surrounding neighborhood. The surrounding neighborhood is comprised of a mixture of residential uses and commercial uses on the North 5<sup>th</sup> Street and North 4<sup>th</sup> Street frontages. Point D is not applicable because there is no existing housing stock on the project site and the proposed project is on file.*

*As mentioned previously, The project site is listed as an Identified Site/Structure on the Historic Resources Inventory under 21 North 5<sup>th</sup> Street (APN: 467-20-010). Staff provided an update to the Historic Landmarks Commission at the Historic Landmarks Commission meeting on February 2, 2017. Staff stated that after reviewing the Civic Center Environmental Impact Reports and the DPR form that was prepared for the project, it is unclear why the project site was placed on the Historic Resources Inventory. The DPR form concluded that the site does not meet the threshold for listing on the City Historic Resources Inventory (with a tally of 26). Staff will bring this back to the Historic Landmarks Commission as a clean-up item to remove the site from the Historic Resources Inventory.*

**11. Tree Removal Findings.** Chapter 13.32 of the San Jose Municipal Code establishes required findings for a Tree Removals which findings are made for the Project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and for the reasons stated below, and subject to the conditions set forth in this Permit.

- a. The location of the trees with respect to a proposed improvement unreasonably restricts the economic development of the parcel in question.

*The nine trees, ranging from 10 inches to 78 inches, located on the project site are located within the proposed footprint of the proposed building. Four of these trees are ordinance-sized trees ranging from 59 to 78 inches in circumference. None of these trees are native trees.*

In accordance with the findings set forth above, a Special Use Permit for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **granted**. The Director of Planning, Building, and Code Enforcement expressly declares that it would not have granted this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

**APPROVED SUBJECT TO THE FOLLOWING CONDITIONS:**

1. **Acceptance of Permit.** Per Section 20.100.290(B), should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Permit Expiration.** This Permit shall automatically expire two years from and after the date of issuance hereof by said Director, if within such time period, a Building Permit has not been obtained or the use, if no Building Permit is required, has not commenced, pursuant to and in accordance with the provision of this Permit. The date of issuance is the date this Permit is approved by the Director of Planning. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit in accordance with Title 20. The Permit Adjustment must be approved prior to the expiration of this Permit.
3. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Regional Wastewater Facility to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Control Board for the San Francisco Bay Region. Substantive conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.
4. **Building Permit/Certificate of Occupancy.** Procurement of a Building Permit and/or Certificate of Occupancy from the Building Official for the structures described or contemplated under this permit shall be deemed acceptance of all conditions specified in this permit and the applicant's agreement to fully comply with all of said conditions. No change in the character of occupancy or change to a different group of occupancies as described by the "Building Code" shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San Jose Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.



5. **Use Authorization.** This Special Use Permit allows the demolition of an approximately 5,574 square foot existing building, the removal of nine trees, four of which are ordinance sized ranging from 59 to 78 inches in circumference and the construction of two 28-story residential towers to include 298 residential units in the west tower and 312 residential units in the east tower with three levels of underground parking and four levels of above ground parking, to allow six commercial condominiums which includes approximately 14,381 square feet of ground floor commercial uses and up to 24,693 square feet of flex/office space. This permit does not allow the removal of any street trees. The commercial condominiums must be a minimum of 750 square feet in size.
6. **Conformance to Plans.** The development of the site shall conform to the approved Special Use Permit plans entitled, "SJSC Towers" dated received March 9, 2017, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), with the exception of any subsequently approved changes.
7. **Colors and Materials.** All building colors and materials are to be those specified on the Approved Plan Set. Any change in building colors and material shall require a Permit Adjustment.
8. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code. The Permit shall be subject to revocation if the subject use is conducted in such a manner as to cause a nuisance, as defined above.
9. **Signal Cabinet Location.** The location of the traffic signal cabinet boxes shall be to the satisfaction of the Director of Planning, Building and Code Enforcement, the Director of the Department of Transportation and the Director of Public Works prior to issuance of grading permits. Any subsequent alternations on private property shall require a Permit Adjustment issued by the Director of Planning, Building and Code Enforcement.
10. **Building Division Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
  - a. *Construction Plans.* This permit file number, SP17-009, shall be printed on all construction plans submitted to the Building Division.
  - b. *Americans with Disabilities Act.* The applicant shall provide appropriate access as required by the Americans with Disabilities Act (ADA).
  - c. *Construction Plan Conformance.* A project construction plan conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to any building permit issuance, building permit plans shall conform to the approved Planning development permits and applicable conditions.
  - d. *Project Addressing Plan.* Prior to issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official: The project applicant shall submit an addressing plan for approval for the subject development (residential, mixed use, complex commercial or industrial). The addressing plan should include proposed street names for the streets (as referenced on an approved tentative map) and the type of

addressing (i.e., individual street addresses as compared to unit number off of a primary street).

11. **Lock Boxes.** The project development shall provide lock boxes to the satisfaction of the Chief Building Official and Fire Chief.
12. **Special Access Requirements for Podium Buildings.** The developer shall provide Fire Department personnel route of travel for the interior courts. The Fire Department requires all exterior stairways to have direct egress to all interior court(s) without obstructions for equipment (i.e., ladders, etc.) used by this Department for rescue as well as suppression. All exterior stairways to interior podium shall be 6 feet wide for the fire personnel for reasons as noted.
13. **General Fire Prevention Requirements.** The developer shall provide the following improvements:
  - a. *Fire Sprinkler System.* Building(s) shall be provided with an automatic fire extinguishing system in accordance with CFC 903.2 and SJFC 17.12.630. Systems serving more than 20 heads shall be supervised by an approved central, proprietary, or remote service to the satisfaction of the Fire Chief.
  - b. *Requirements for Trash Areas.* Outdoor covered areas and trash enclosures may require the sprinkler system to be extended to protect them.
  - c. *Fire Alarm System.* Building(s) shall be provided with an automatic fire alarm system as required by CFC 907.2 and 907.3.
  - d. *Standpipes Available During Construction.* All buildings under construction, three or more stories in height, shall have at least one standpipe for use during construction. Such standpipe shall be provided with fire department hose connections. Location(s) and numbers of standpipe(s) shall be reviewed and approved by the Fire Department.
  - e. *Complex Map.* A complex map is recommended which incorporates an elevated view of the building and individual unit addresses. It should be illuminated during the hours of darkness and positioned in the lobby area so as to be readily readable from main pedestrian access entrance. A complex map should also be placed contiguous to the vehicular entrance to the development where it will not cause stacking problems when being viewed.
  - f. *Public Safety Radio Coverage.* Public Safety Radio Coverage is to be provided throughout the area of each floor of the building. Communication repeaters may be required to be installed in the buildings.
  - g. *Elevators.* Elevators shall be in accordance with the requirements stipulated in the California Building Code Chapter 30. All buildings with one or more passenger service elevators shall be provided with not less than one medical emergency service elevator.
  - h. *Management Association Responsibilities for Life & Safety Systems.* Should the residential units be privately owned, the developer/owner shall create and maintain a Management Association which will be responsible for the fire/life safety systems inspections per Title 19 and access to the systems if applicable.
  - i. *Construction Fire Protection Plan.* A "Construction Fire Protection Plan" for approval by San Jose Building and Fire Departments is required prior to starting construction for wood framing projects consisting of 15 or more dwelling units or construction exceeding a total of 50,000 square feet.

14. **Fire Flow.** Required fire flow for the site is calculated using CFC Appendix B, or as otherwise approved in writing by the Fire Chief. A 50% reduction in required fire flow may be authorized for sprinklered buildings containing light hazard occupancies. A 25% reduction in required fire flow may be authorized for sprinklered buildings containing ordinary hazard occupancies. No reduction is provided for unsprinklered or extra hazard occupancy buildings.
15. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by the Fire Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief. The number and distribution of fire hydrants shall be based on CFC Table C105.1 (no reduction allowed for fire flow requirement).
16. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.
17. **Fire Lanes.** Fire lanes, suitably designated "FIRE LANE-NO PARKING," shall be provided as required by the Fire Department.
18. **Fire Department Permit Required.** A permit must be obtained from the Building and Fire Departments. Submit three (3) sets of construction plans to the Building Department, one (1) of those sets of plans will be routed to the San José Fire Department for review and comments.
19. **Fire Department Connections.** All fire department connections shall be located within 100 feet from a standard public fire hydrant. All alternate means of protections shall be reviewed by the Fire Department. The public fire hydrant(s) shall be located on the same frontage as all fire service connections.
20. **Fire Department Connections.** Fire sprinkler and standpipe fire department connections (FDC) serving the same building shall be located directly adjacent to each other. Buildings in excess of 200 feet long and or having frontage on multiple streets shall have multiple FDCs. The Locations shall be approved during plan check by San Jose Fire Department and shall be depicted on the riser key plan(s).
21. **Access Roads.** Approved access road(s) and hydrant(s) shall be provided once wood framing is available at site or provide an alternate means of water suppression subject to the approval of the Fire Department. Obtain permit and pay applicable fees prior to the installation. Contact the San José Fire Department's Fire Protection Systems Section at (408) 277-8756.
22. **Access Control.** When access control devices including bars, grates, gates, electric and/or magnetic locks, or similar devices which would inhibit rapid fire department emergency access to the building are installed, such devices shall be approved by the Chief. All access control devices shall be provided with an approved means for deactivation or unlocking by the Fire Department. Access control devices shall also comply with CFC/CBC Chapter 10 for exiting.
23. **Security Gate Access.** All access control vehicle security gate(s) shall be a minimum of 20 feet clear width and may have a clear with of 14 feet for each direction of travel when split by median. Gates shall be recessed beyond the turning radius required by the San Jose Fire Department and without obstruction of any median island dividers. All gate installing shall be reviewed and approved prior to construction. Electric gate operators must have UL 325 listing and it gate must comply with ASTM F2200.

24. **Affordable Housing.** The project may be subject to the City's Inclusionary Housing Ordinance, Policy, or Affordable Housing Impact Fee (AHIF), as may be amended, or other applicable ordinances, policies, or regulations. If the development is subject to the referenced Ordinance, Policy or AHIF, as may be amended, or other applicable ordinances, policies or regulations, the Permittee shall, prior to the issuance of building permits:
- Submit an Affordable Housing Compliance Plan Application to the Housing Department, subject to Housing Department review and approval; and
  - Execute and record against the Project an Affordable Housing Agreement, subject to Housing Department review and approval, prior to the approval of any final or parcel map, or issuance of any building permits, whichever occurs first for the Project; and
  - No Temporary Certificate of Occupancy, or Certificate of Occupancy, or Notice of Completion for any units shall be issued until all requirements of the Inclusionary Housing Ordinance, Inclusionary Housing Policy and/or the AHIF Resolution, or other applicable ordinances or policies, have been completely satisfied to the satisfaction of the Housing Department.
25. **Public Works Clearance for Building Permit(s) or Map Approval:** Prior to the approval of the Tract Map by the Director of Public Works, or the issuance of Building permits, whichever occurs first, the applicant will be required to have satisfied all of the following Public Works conditions. The applicant is strongly advised to apply for any necessary Public Works permits prior to applying for Building permits. Standard review timelines and submittal instructions for Public Works permits may be found at the following: <http://www.sanjoseca.gov/index.aspx?nid=2246>.
- Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completion deposit, and engineering and inspection fees.
  - Transportation:**
    - A Traffic Operational Analysis has been performed for this project based on 346 AM and 352 PM peak hour trips. See separate Traffic memo dated February 17, 2017 for additional information.
    - Traffic signal cabinets at the intersection of E. Santa Clara Street and N. 5<sup>th</sup> Street shall be relocated along the N. 5<sup>th</sup> Street frontage near the intersection and curb area. Other alternative locations may be considered during the implementation stage. Final location must be reviewed and approved by Public Works, Department of Transportation, and coordinated with Planning, Building, and Code Enforcement.
    - Modify 4<sup>th</sup> Street per the following:
      - Convert the southbound left-turn lane on 4<sup>th</sup> Street at Santa Clara Street into a shared through/left-turn lane to help alleviate the on-site vehicle queuing issue and the weaving issue on 4<sup>th</sup> Street at the project driveway.
      - Construct a bulb-out at the intersection of 4<sup>th</sup> Street and Santa Clara Street at the project frontage. A signal modification to add a push button pole within the bulb-out will be required.



- iv. Modify the 5<sup>th</sup> Street/Santa Clara Street traffic signal to relocate the controller and service cabinets and add an eastbound projected left-turn phase. This will also include wiring the signal for a future ped scramble. Restriping the back-to-back left-turn pockets on Santa Clara Street between 4<sup>th</sup> and 5<sup>th</sup> Streets so that they provide a relatively equal amount of vehicle storage as well as the final design will be evaluated at the implementation stage.
- v. Pedestrian improvements at the northwest and northeast corners of the 5<sup>th</sup> Street/Santa Clara Street intersection which may include bulb-outs with R-11 handicap ramps.
- vi. Retain the existing no parking areas along the curb adjacent to the site on 4<sup>th</sup> Street, and establish no parking zones immediately adjacent to the 5<sup>th</sup> Street project driveway, to ensure that exiting vehicles can see bicycles and vehicles traveling along 4<sup>th</sup> and 5<sup>th</sup> Streets.
- vii. An existing Zipcar curb parking space on 5th Street would need to be eliminated in order to provide the proposed retail loading zone. The project applicant will be responsible to work with City staff to determine a new location for the Zipcar parking space and all costs associated with this relocation.
- viii. This project is located in the expanded Downtown Core and is covered under the new San Jose Downtown Strategy 2000 EIR; therefore, no further traffic analysis is required. We conclude that the subject project will be in conformance with the City of San Jose Transportation Level of Service Policy (Council Policy 5-3).
- c. **BART:** The project will be required to submit a copy of the structural and shoring plans to the Santa Clara Valley Transportation Authority (SCVTA) for conformance review with the proposed future BART tunnel to ensure no conflicts or negative impacts to the project will occur due to the future tunneling.
- d. **Grand Boulevard:** This project fronts E. Santa Clara Street which is designated as one of the seven Grand Boulevards per the Envision San Jose 2040 General Plan. Grand Boulevards are identified to serve as major transportation corridors for primary routes for VTA light-rail, bus rapid transit, standard or community buses, and other public transit vehicles.
- e. **Street Vacation:** A street vacation is required at the northeast corner of N. 4<sup>th</sup> Street and E. Santa Clara Street in order to accomplish the land use plan as shown. The street vacation process requires further discretionary approval by the City Council and the project will be subject to this process prior to Public Works Clearance. In addition, the preliminary title report provided by the applicant indicates that the City of San Jose owns the subject street in fee. As a result, the property will be subject to a sale and disposition process, which may involve public auction. This process would not guarantee that the property would be sold exclusively to the Developer. A street vacation application is on file with the Department of Public Works, but is waiting for environmental clearance for the site before the vacation may be processed.
- f. **Grading/Geology:**
  - i. A grading permit is required prior to the issuance of a Public Works Clearance.
  - ii. All on-site storm drainage conveyance facilities and earth retaining structures 4' foot in height or greater (top of wall to bottom of footing) or is being surcharged (slope of 3:1 or greater abutting the wall) shall be reviewed and approved under Public Works grading and drainage permit prior to the issuance of Public Works Clearance. The

- drainage plan should include all underground pipes, building drains, area drains and inlets. The project shall provide storm drainage calculations that adhere to the 2013 California Plumbing Code or submit a stamped and signed alternate engineered design for Public Works discretionary approval and should be designed to convey a 10 year storm event.
- iii. If the project proposes to haul more than 10,000 cubic yards of cut/fill to or from the project site, a haul route permit is required. Prior to issuance of a grading permit, contact the Department of Transportation at (408) 535-3850 for more information concerning the requirements for obtaining this permit.
  - iv. Because this project involves a land disturbance of more than one acre, the applicant is required to submit a Notice of Intent to the State Water Resources Control Board and to prepare a Storm Water Pollution Prevention Plan (SWPPP) for controlling storm water discharges associated with construction activity. Copies of these documents must be submitted to the City Project Engineer prior to issuance of a grading permit.
  - v. The Project site is within the State of California Seismic Hazard Zone. A geotechnical investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CGS Special Publication 117A) and the Southern California Earthquake Center (SCEC, 1999). A recommended depth of 50 feet should be explored and evaluated in the investigation.
- g. **Shoring:**
- i. Shoring plans will be required for review and approval as part of the Grading Permit for this project.
  - ii. If tie-backs are proposed in the Public right-of-way as a part of the shoring operation, a separate Revocable Encroachment Permit must be obtained by the Developer or Contractor and must provide security, in the form of a CD or Letter of Credit, in the amount of \$100,000. No other shoring system will be allowed to encroach within the public right-of-way (i.e. soldier beams).
  - iii. Encroachments onto City property (APN's 467-20-003, 004, 005, 017 & 085) would need to be coordinated with the City's Real Estate and Attorney's Office. The grading, drainage, and excavation plans would not be approved showing shoring encroachments on City property without the approved agreement(s), insurance, and/or security required by the agreement.
  - iv. Existing sanitary/storm sewer in close proximity to any tie-backs shall be videotaped after tie-back installation.
- h. **Stormwater Runoff Pollution Control Measures:** This project must comply with the City's Post-Construction Urban Runoff Management Policy (Policy 6-29) which requires implementation of Best Management Practices (BMPs) which includes site design measures, source controls and numerically-sized Low Impact Development (LID) stormwater treatment measures to minimize stormwater pollutant discharges.
- i. The project's Stormwater Control Plan and numeric sizing calculations have been reviewed and this project will be in conformance with City Policy 6-29.

- ii. Final inspection and maintenance information on the post-construction treatment control measures must be submitted prior to issuance of a Public Works Clearance.
- i. **Stormwater Peak Flow Control Measures:** The project is located in a non-Hydromodification Management area and is not required to comply with the City's Post-Construction Hydromodification Management Policy (Council Policy 8-14).
- j. **Flood: Zone D:** The project site is not within a designated Federal Emergency Management Agency (FEMA) 100-year floodplain. Flood Zone D is an unstudied area where flood hazards are undetermined, but flooding is possible. There are no City floodplain requirements for Zone D.
- k. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
- l. **Parks:** This residential project is subject to either the requirements of the City's Park Impact Ordinance (Chapter 14.25 of Title 14 of the San Jose Municipal Code) and the Parkland Dedication Ordinance (Chapter 19.38 of Title 19 of the San Jose Municipal Code) for the dedication of land and/or payment of fees in-lieu of dedication of land for public park and/or recreational purposes under the formula contained within in the Subject Chapter and the Associated Fees and Credit Resolutions.
- m. **Assessments:** A portion of this project is located within the Basic Zone of the Downtown San José Property-Based Business Improvement District (PBID), which provides enhanced cleaning, information and safety services, beautification activities, and business retention and growth programs within the boundaries of the district. Benefiting properties within the district pay for the services through annual assessments placed on the County property tax bills, which may be increased by up to 5% each year. The 2016-17 assessment is calculated based on the land use and its building and lot square footages. Commercial properties pay \$0.066495387 and residential properties pay \$0.044884133 per building and lot square footages. Future year assessments will be collected through the County property tax bills listed under Tax Code 916 "SJ DOWNTOWN PBID". This project will be required to go through the annexation process as a result of the benefit the properties will receive from the district. Please contact Thomas Borden at (408) 535-6831 for additional information.
- n. **Parade of Floats Public Art Statues:** Applicant shall satisfy the following requirements:
  - i. Retain a 3<sup>rd</sup> party art conservation consultant (Arts Expert) to develop a plan for the temporary removal, storage, restoration, and reinstallation Sculptures ("Art Plan"). The Art Plan shall be submitted to the City of San Jose Public Art Program (SJPAP), Department of Public Works (DPW) and Artist, for review and approval. Applicant shall contract with the Artist to be compensated for their time advising, reviewing, or approving of Art Plan.
  - ii. Provide a Structural Engineer to develop plans, structural calculations (based on the current CBC) and specifications for the removal, transport, re-installation and foundations of the reinstalled statues. The original plans entitled "City of San Jose 5<sup>th</sup> Street Streetscape Public Artwork Parade of Floats" may be used for reference by the Structural Engineer.
  - iii. Restore electrical to the "Arts & Cultural" sculpture during reinstallation.

- iv. Refurbish the sculptural aluminum figures on the columns of the “Arts & Cultural” and “Agriculture” sculpture. Repairs and restorations, whether performed by Artist or by third parties, shall be made in accordance with professionally recognized principles of conservation of artworks and in accordance with the Art Plan.
- v. An executed loan and storage agreement processed through the Office of Economic Development – Office of Cultural Affairs will be required before the Public Art Sculptures are removed and stored. Developer shall coordinate with Michael Ogilvie and Mary Rubin of the Office of Economic Development – Office of Cultural Affairs at [michael.ogilvie@sanjoseca.gov](mailto:michael.ogilvie@sanjoseca.gov) and [mary.rubin@sanjoseca.gov](mailto:mary.rubin@sanjoseca.gov).
- vi. If the statues are damaged, Applicant shall be responsible for all costs associated with repair and/or replacement of the statue. Applicant will be required to contract with the original artist for the repair and/or replacement which will include, but not limited to, on-site inspection and approval of the final installation. Applicant shall coordinate with Michael Ogilvie and Mary Rubin of the Office of Economic Development – Office of Cultural Affairs, at [michael.ogilvie@sanjoseca.gov](mailto:michael.ogilvie@sanjoseca.gov) and [mary.rubin@sanjoseca.gov](mailto:mary.rubin@sanjoseca.gov), for how to contact the artist for such purposes.
- vii. Provide a \$7,500 contribution for the City of San Jose Public Art Program staff time and coordination during plan review and construction.
- o. **Special Pavement Restoration:**
  - i. E. Santa Clara Street: Project will be trenching within the newly paved portion of E. Santa Clara Street which utilized Rubberized Asphalt (RHMA). Special pavement restoration for utility trenching will be determined at the Implementation stage. Project should attempt to limit the number of trenches along E. Santa Clara Street to minimize the restoration requirements.
  - ii. N. 5<sup>th</sup> Street: The N. 5<sup>th</sup> Street traveled way is comprised of concrete panels and any intrusion or damage to existing panels due to construction will require the removal and replacement of the entire concrete panel(s). The removal and replacement will be done in accordance with the details and specifications of the “Civic Plaza/Fifth Street Streetscape Project”.
- p. **Street Improvements:**
  - i. Remove and replace curb, gutter and sidewalk along N. 4<sup>th</sup> Street with a 12’ wide attached sidewalk and 6’ x 4’ tree wells located at the back of curb.
  - ii. Remove and replace sidewalk along E. Santa Clara Street with a 20’ wide sidewalk with 5’ x 5’ tree wells located at the back of curb. This will require approximately 4’ of sidewalk easement dedication. Additionally, preservation of the existing brick pavers will be required. If the existing brick pavers are damaged during construction, the Developer shall be responsible to replace these pavers and shall adhere to the plans entitled “Santa Clara Street Green Mobility Sidewalk Improvement Project”.
  - iii. Removal and replacement of the sidewalk along N. 5<sup>th</sup> Street with an approximate 37’ sidewalk section with 5’ x 5’ tree wells.
  - iv. Include as part of the improvement plans a detailed sidewalk scoring pattern plan for all frontages that shows the placement of all utilities along the frontage in relation to the scoring pattern.



- v. The removal and replacement of parking meters and associated striping along N. 5<sup>th</sup> Street and E. Santa Clara Street shall be coordinated with the Department of Transportation during the implementation stage.
- vi. Proposed driveway widths along N. 4<sup>th</sup> Street and N. 5<sup>th</sup> Street to be 26' per City of San Jose Standard Detail R-6.
- vii. Close unused driveway cuts.
- viii. Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- ix. Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement on N. 4<sup>th</sup> Street and E. Santa Clara Street will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.
- q. **Site Utilization Plan and Revocable Encroachment Permit (Street/Sidewalk Closures):** At the Implementation stage, Developer shall provide to the Public Works Project Engineer a Site Utilization Plan with the application of a Revocable Encroachment Permit for any proposed sidewalk and lane closures to support the onsite construction activities.
  - i. The following should be included with the Site Utilization Plan and Revocable Permit application, but are not limited to:
    - 1) **Site Utilization Plan and Letter of Intent:** The site utilization plan should provide a detailed plan of the location of the temporary facilities within the boundary of the construction site. The Letter of Intent should provide a description operations of the site as well as the reasons for the sidewalk/lane closures and why the activities/uses that are proposed within the Public right-of-way can't occur within the construction site. These include the use of the right of way for temporary facilities and activities such as man lifts, baker tanks, staging area, concrete pumping activities, etc. This would also provide a discussion as to the reasons why covered pedestrian walkways will not be provided (ex. swinging loads over sidewalk not safe for pedestrians).
    - 2) **Multi-Phased Site Specific Sketches:** These sketches should show the phased closures during the course of construction with a provided timeframe estimate of when each phase would be implemented. These sketches should include the type and location of the work to be accomplished within the right-of-way. The exhibit should show in detail the vehicular and/or pedestrian diversion route that shows the appropriate safety equipment, such as barricades, cones, arrow boards, signage, etc.
  - ii. Developer shall minimize the potential impact to vehicular and pedestrian traffic by:
    - 1) Implementing the closures at the time the onsite activities dictate the need for the closure.
    - 2) Minimizing the closure timeframes to accomplish the onsite tasks and implement the next phase of the closure as outlined in condition 17a.ii above.
  - iii. If proposed lane and parking closures are a part of the Revocable Permit Application, Developer shall submit Downtown Lane Closure and Tow Away Permit Applications to DOT. These applications may be obtained at:

<http://www.sanjoseca.gov/index.aspx?NID=3713>. Developer shall contact DOT at (408) 535-8350 for more information concerning the requirements of these applications.

- r. **SNI:** This project is located within the 13<sup>th</sup> Street SNI area. Public improvements shall conform to the approved EIR and neighborhood improvement plan.
- s. **Sanitary:**
  - i. Based on the information provided by the applicant regarding the location of laterals and proposed sanitary sewer flow rates from the site, the surrounding sanitary sewer mains have adequate capacity to serve the proposed development. If the project increases in size or changes the proposed sanitary lateral locations, the project will be required to re-evaluate the sanitary capacity. This could result in the construction of new mains or upsizing to the existing mains.
  - ii. The project is required to submit plan and profile of the private sewer mains with lateral locations for final review and comment prior to construction.
  - iii. Proposed sanitary sewer cleanouts shall be within 5' from the property line or back of walk.
- t. **Greater Downtown Area Master Plans:** This project is located within the Greater Downtown area. Public improvements shall conform to the Council approved San Jose Downtown Streetscape and Street and Pedestrian Lighting Master Plans.
- u. **Electrical:** Existing electroliers along the project frontage will be evaluated at the public improvement stage and any street lighting requirements will be included on the public improvement plans.
- v. **Street Trees:** The locations of the street trees will be determined at the street improvement stage. Contact the City Arborist at (408) 794-1901 for the designated street tree. Install street trees within public right-of-way along entire project street frontage per City standards; refer to the current "Guidelines for Planning, Design, and Construction of City Streetscape Projects". Street trees shall be installed in cut-outs at the back of curb along N. 4<sup>th</sup> Street and E. Santa Clara Street. Street trees along N. 5<sup>th</sup> Street shall be located at back of curb and approximately 22.5' from back of curb to center of tree well. Obtain a DOT street tree planting permit for any proposed street tree plantings. Street trees shown on this permit are conceptual only.
  - i. **Referrals:** This project should be referred to the Santa Clara Valley Transportation Authority (SCVTA) and Bay Area Rapid Transit (BART).
- w. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
- x. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to review and approval by the Director of Planning through a subsequent Permit Adjustment.
- y. **Discretionary Review.** The Director of Planning, Building and Code Enforcement maintains the right of discretionary review of requests to alter or amend structures, conditions, or restrictions of this Permit incorporated by reference in accordance with Chapter 20.100 of the San Jose Municipal Code.
- z. **Building and Property Maintenance.** The property owner or management company shall maintain the property in good visual and functional condition. This shall include,

but not be limited to all exterior elements of the buildings such as paint, roof, paving, signs, lighting and landscaping.

- aa. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. Trash areas shall be maintained in a manner to discourage illegal dumping.
- bb. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage.
- cc. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement, including job sites for projects under construction.
- dd. **Street Number Visibility.** Street numbers of the buildings shall be easily visible from the street at all times, day and night.
- ee. **Utilities.** All new on-site telephone, electrical, and other overhead service facilities shall be placed underground.
- ff. **Green Building Requirements for Mixed Use New Construction Projects.** The development is subject to the City's Green Building Ordinance for Private Sector New Construction. Prior to the issuance of any shell or complete building permits issued on or after September 8, 2009 for the construction of buildings approved through the scope of this permit, the applicant shall pay a Green Building Refundable Deposit applicable to the gross square footage of said buildings which are approved through this permit. The request for refund of the Green Building Deposit together with green building certification evidence demonstrating the achievement of the green building standards indicated above shall be submitted within a year after the building permit expires or becomes final, unless a request for an extension is submitted to the Director of Planning, Building, and Code Enforcement in accordance with Section 17.84.305D of the Municipal Code.
- gg. **Demolition.** This permit allows the demolition of buildings and structures as noted on the Approved Plans. The demolition of the building and structures and the removal of on-site trees may occur prior to issuance of grading permit.
- hh. **Avigation Easement.** Prior to the issuance of a Building Permit, the property owner shall grant an Avigation Easement to the City of San Jose. Contact Cary Greene of the San Jose Airport Department at 408-392-3623 or [cgreene@sjc.org](mailto:cgreene@sjc.org) to initiate the easement dedication process.
- ii. **FAA Clearance.** Prior to the issuance of a Building Permit, the permittee shall obtain from the Federal Aviation Administration (FAA) a "Determination of No Hazard" for each building high point. The permittee shall file a "Notice of Proposed Construction or Alteration" (FAA Form 7460-1) for each building corner and any additional higher point(s). The data on the forms should be prepared by a licensed civil engineer or surveyor using NAD83 latitude/longitude coordinates out to hundredths of seconds and NAVD88 elevations rounded off to next highest foot.
- jj. **FAA Clearance Permit Adjustment.** Prior to the issuance of a Building Permit, the permittee shall apply for and obtain a Permit Adjustment to incorporate all FAA conditions identified in the Determinations of No Hazard (if issued), e.g., installation of roof-top obstruction lighting and construction-related notifications, into the Permit conditions of approval.

kk. **Standard Environmental Project Conditions.** The project shall conform to all applicable Standard Project Conditions approved for this development as listed below.

i. Air Quality:

- 1) All exposed surfaces (e.g., parking areas, staging areas, soil piles, graded areas, and unpaved access roads) shall be watered two times per day.
- 2) All haul trucks transporting soil, sand, or other loose material off-site shall be covered.
- 3) All visible mud or dirt track-out onto adjacent public roads shall be removed using wet power vacuum street sweepers at least once per day. The use of dry power sweeping is prohibited.
- 4) All vehicle speeds on unpaved roads shall be limited to 15 mph.
- 5) All roadways, driveways, and sidewalks to be paved shall be completed as soon as possible. Building pads shall be laid as soon as possible after grading unless seeding or soil binders are used.
- 6) Idling times shall be minimized either by shutting equipment off when not in use or reducing the maximum idling time to 5 minutes (as required by the California airborne toxics control measure Title 13, Section 2485 of California Code of Regulations [CCR]). Clear signage shall be provided for construction workers at all access points.
- 7) All construction equipment shall be maintained and properly tuned in accordance with manufacturer's specifications. All equipment shall be checked by a certified mechanic and determined to be running in proper condition prior to operation.
- 8) Post a publicly visible sign with the telephone number and person to contact at the Lead Agency regarding dust complaints. This person shall be respond and take corrective action within 48 hours. The Air District's phone number shall also be visible to ensure compliance with applicable regulations.

ii. Biological Resources:

- 1) The applicant shall retain a consulting arborist. The construction superintendent shall meet with the consulting arborist before beginning work to discuss work procedures and tree protection.
- 2) Fence all trees to be retained to completely enclose the Tree Protection Zone prior to demolition, grubbing or grading. Fences shall be six-foot chain link or equivalent as approved by consulting arborist. Fences are to remain until all grading and construction is completed.
- 3) No grading, construction, demolition or other work shall occur within the Tree Protection Zone. Any modifications must be approved and monitored by the consulting arborist.
- 4) If injury should occur to any tree during construction, it shall be evaluated as soon as possible by the consulting arborist so that appropriate treatments can be applied.
- 5) No excess soil, chemicals, debris, equipment or other materials shall be dumped or stored within the Tree Protection Zone.
- 6) Trees removed as a result of the project would be required to be replaced in accordance with all applicable laws, policies or guidelines, including:



- a) City of San José Tree Protection Ordinance
- b) San José Municipal Code Section 13.28
- c) General Plan Policies MS-21.4, MS-21.5, and MS-21.6
- d) The species of trees to be planted shall be determined in consultation with the City Arborist and the Department of Planning, Building and Code Enforcement.

<b>City of San José Standard Tree Replacement Ratios</b>				
<b>Diameter of Tree to Be Removed</b>	<b>Type of Tree to be Removed</b>			<b>Minimum Size of Each Replacement Tree</b>
	<b>Native</b>	<b>Non-Native</b>	<b>Orchard</b>	
18 inches or greater	5:1	4:1	3:1	24-inch box
12-18 inches	3:1	2:1	none	24-inch box
Less than 12 inches	1:1	1:1	none	15-gallon container
<p>x:x = tree replacement to tree loss ratio</p> <p>Note: Trees greater than 18" diameter shall not be removed unless a Tree Removal Permit, or equivalent, has been approved for the removal of such trees.</p>				

- 7) In the event the project site does not have sufficient area to accommodate the required tree mitigation, one or more of the following measures would be implemented, to the satisfaction of the Director of Planning, Building and Code Enforcement, at the development permit stage:
  - a) The size of a 15-gallon replacement tree may be increased to a 24-inch box and count as two replacement trees.
  - b) An alternative site(s) would be identified for additional tree planting. Alternative sites may include local parks or schools or installation of trees on adjacent properties for screening purposes to the satisfaction of the Director of the Department of Planning, Building and Code Enforcement.
  - c) A donation of \$300 per mitigation tree on Our City Forest for in-lieu off-site tree planting in the community. These funds would be used for tree planting and maintenance of planted trees for approximately three years. A donation receipt for off-site tree planting shall be provided to the Building Division within the Department of Planning, Building, and Code Enforcement prior to the issuance of any occupancy permits.
- iii. Cultural Resources:
  - 1) This Project would incorporate the following guidelines. Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains and the Santa Clara County Coroner shall be notified immediately. If the Coroner determines that the remains are of Native American origin, he shall notify the

Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall reinter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. If the Director of Planning, Building and Code Enforcement finds that the archaeological find is not a significant resource, work would resume only after the submittal of a preliminary archaeological report and after provisions for reburial and any ongoing monitoring are accepted.

iv. Hydrology and Water Quality:

- 1) Burlap bags filled with drain rock shall be installed around storm drains to route sediment and other debris away from the drains.
- 2) Earthmoving or other dust-producing activities shall be suspended during periods of high winds.
- 3) All exposed or disturbed soil surfaces shall be watered at least twice daily to control dust as necessary.
- 4) Stockpiles of soil or other materials that can be blown by the wind shall be watered or covered.
- 5) All trucks hauling soil, sand, and other loose materials shall be covered.
- 6) All paved access roads, parking areas, staging areas, and residential streets adjacent to the construction sites shall be swept daily with water sweepers.
- 7) Vegetation in disturbed areas shall be replanted as quickly as possible.
- 8) All unpaved entrances to the site shall be filled with rock to remove mud from tires prior to entering City streets. A tire wash system may also be installed at the request of the City.

v. Operational Noise:

- 1) A detailed acoustical study shall be prepared during final building design to evaluate the potential noise generated by building mechanical equipment and demonstrate the necessary noise control to meet the city's 55 dBA DNL goal. Noise control features such as sound attenuators, baffles, and barriers shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations around the project site. The noise control features identified by the study will be incorporated in the project. These noise control features are below:
  - a) A detailed acoustical study shall be prepared during building design to evaluate the potential noise generated by building mechanical equipment and to identify the necessary noise controls that are included in the design to meet the City's 55 dBA DNL noise limit at the shared property line. The study shall evaluate the noise from the equipment and predict noise levels at noise-sensitive locations. Noise control features, such as sound attenuators, baffles, and barriers, shall be identified and evaluated to demonstrate that mechanical equipment noise would not exceed 55 dBA DNL at noise-sensitive locations, such as residences. The study shall be submitted to the City of San José for review and approval prior to issuance of any building permits.

- b) Ensure that noise-generating activities, such as maintenance activities and loading/unloading activities, are limited to the hours of 7:00 am and 9:00 pm.

vi. Construction Noise:

- 1) Construction activities shall be limited to the hours between 7:00 AM and 7:00 PM, Monday through Friday, unless permission is granted with a development permit or other planning approval. No construction activities are permitted on the weekends at sites within 500 feet of a residence.
- 2) Construct solid plywood fences around construction sites adjacent to operational businesses, residences, or other noise-sensitive land uses.
- 3) Equip all internal combustion engine-driven equipment with intake and exhaust mufflers that are in good condition and appropriate for the equipment.
- 4) Unnecessary idling of internal combustion engines should be strictly prohibited.
- 5) Locate stationary noise-generating equipment such as air compressors or portable power generators as far as possible from sensitive receptors. Construct temporary noise barriers to screen stationary noise-generating equipment when located near adjoining sensitive land uses. Temporary noise barriers could reduce construction noise levels by 5 dBA.
- 6) Utilize “quiet” air compressors and other stationary noise sources where technology exists.
- 7) Control noise from construction workers’ radios to a point where they are not audible at existing residences bordering the project site.
- 8) Notify all adjacent business, residences, and other noise-sensitive land uses of the construction schedule, in writing, and provide a written schedule of “noisy” construction activities to the adjacent land uses and nearby residences.
- 9) A temporary noise control blanket barrier could be erected, if necessary, along building facades facing construction sites. This mitigation would only be necessary if conflicts occurred which were irresolvable by proper scheduling. Noise control blanket barriers can be rented and quickly erected.
- 10) If pile driving is necessary, pre-drill foundation pile holes to minimize the number of impacts required to seat the pile.
- 11) If pile driving is necessary, consider the use of “acoustical blankets” for receptors located within 100 feet of the site.
- 12) Designate a “disturbance coordinator” who would be responsible for responding to any complaints about construction noise. The disturbance coordinator will determine the cause of the noise complaint (e.g., bad muffler, etc.) and will require that reasonable measures be implemented to correct the problem. Conspicuously post a telephone number for the disturbance coordinator at the construction site and include in it the notice sent to neighbors regarding the construction schedule.

**II. Mitigation Monitoring and Reporting Program.**

i. *Air Quality.*

- 1) Mitigation Measures AIR-1.1: The project applicant shall develop a construction operations plan demonstrating that the off-road equipment used to construct the project would achieve a fleet-wide average 30 percent reduction in PM<sub>2.5</sub>

emissions. Consistent with the air quality assessment, the plan shall include the following measures:

- a) All diesel-powered off-road equipment larger than 50 horsepower and operating at the site for more than two days continuously shall meet U.S. EPA particulate matter emissions standards for Tier 4 engines or equivalent.
- b) The construction contractor shall use CARB-certified Level 3 Diesel Particulate Filters or alternatively-fueled (i.e. non-diesel) equipment, or equivalent, as well as exhaust devices that minimize construction period diesel particulate matter emissions, in accordance with the City's approval.

A copy of the construction operations plan shall be submitted to the Supervising Environmental Planner, Department of Planning, Building and Code Enforcement (PBCE) prior to the start of any construction activity.

ii. *Biological Resources.*

- 1) Mitigation Measures BIO-1.1: Construction shall be scheduled to avoid the nesting season to the extent feasible. The nesting season for most birds, including most raptors in the San Francisco Bay area, extends from February 1 through August 31.
- 2) Mitigation Measures BIO-1.2: If it is not possible to schedule demolition and construction between September 1 and January 31, pre-construction surveys for nesting birds shall be completed by a qualified ornithologist to ensure that no nests would be disturbed during project implementation. This survey shall be completed no more than 14 days prior to the initiation of construction activities during the early part of the breeding season (February 1 through April 30) and no more than 30 days prior to the initiation of these activities during the late part of the breeding season (May 1 through August 31). During this survey, the ornithologist would inspect all trees and other possible nesting habitats immediately adjacent to the construction areas for nests. If an active nest is found sufficiently close to work areas to be disturbed by construction, the ornithologist, in consultation with California Department of Fish and Wildlife (CDFW), would determine the extent of a construction-free buffer zone to be established around the nest, typically 250 feet, to ensure that raptor or migratory bird nests would not be disturbed during project construction.
- 3) Mitigation Measures BIO-1.3: The project applicant shall submit a report indicating the results of the survey and any designated buffer zones to the satisfaction of the Supervising Environmental Planner, PBCE, prior to issuance of any grading permit.

iii. *Cultural Resources.*

- 1) Mitigation Measures CUL-1.1: The project applicant shall complete subsurface testing to determine the extent of possible resources on-site. Subsurface testing shall be completed by a qualified archaeologist. Based on the findings of the subsurface testing, an archaeological resources treatment plan shall be prepared by a qualified archaeologist.
- 2) Mitigation Measures CUL-1.2: Implementation of the plan, by a qualified archaeologist, shall be required prior to the issuance of any demolition and grading permits. The treatment plan shall utilize data recovery methods to reduce impacts on subsurface resources.



- 3) Mitigation Measures CUL-1.3: All historic-era features identified during exploration shall be evaluated based on the California Register of Historic Resources (CRHR) criteria consistent with the archaeological treatment plan. After completion of the field work, all artifacts shall be cataloged and the appropriate forms completed and filed with the Northwest Information Center of the California Archaeological Inventory at Sonoma State University.

iv. *Hazards and Hazardous Materials.*

- 1) Mitigation Measures HAZ-1.1: Sampling Related to Past Uses (Former Gas Stations): The project applicant shall retain a qualified hazardous materials professional to conduct focused sampling and analysis for contamination of soil, soil vapor, and/or groundwater on-site prior to issuance of any grading permit. Sampling on the site shall be under the oversight of the Santa Clara County Department of Environmental Health (SCCDEH), or equivalent regulatory agency, in accordance with a Work Plan prepared by a qualified professional and approved by the SCCDEH (or equivalent regulatory agency).
- 2) Mitigation Measures HAZ-1.2: Site Management Plan (SMP): A SMP shall be prepared by a qualified hazardous materials consultant to establish management practices for handling contaminated soil or other materials encountered during construction activities. The sampling results shall be compared to appropriate risk-based screening levels in the Site Management Plan. The Site Management Plan shall identify potential health, safety, and environmental exposure considerations associated with development activities. The Site Management Plan shall be submitted to the Supervising Environmental Planner of the City of San José Department of Planning, Building, and Code Enforcement and Santa Clara County Department of Environmental Health (or equivalent regulatory agency) for approval prior to commencing construction activities. The Site Management Plan shall include, but is not limited to, the following:
  - a) Management practices for handling contaminated soil or other materials if encountered during construction or cleanup activities and measures to minimize dust generation, stormwater runoff, and tracking of soil off-site.
  - b) Preliminary Remediation Goals (PRGs) for environmental contaminants of concern to evaluate the site conditions following SMP implementation.
  - c) Proper mitigation as needed for demolition of existing structures;
  - d) Management of stockpiles, including sampling, disposal, and dust and runoff control including implementation of a stormwater pollution prevention program;
  - e) Management of underground structures encountered, including utilities and/or underground storage tanks;
  - f) Procedures to follow if evidence of an unknown historic release of hazardous materials (e.g., underground storage tanks, polychlorinated biphenyls [PCBs], asbestos containing materials, lead-based paint, etc.) is discovered during excavation or demolition activities;
  - g) A health and safety plan (HSP) for each contractor working at the site that addresses the safety and health hazards of each site operation phase, including the requirements and procedures for employee protection. The HSP shall outline proper soil handling procedures and health and safety requirements to

minimize work and public exposure to hazardous materials during construction.

- h) Traffic control during site improvements;
- i) Noise, work hours, and other relevant City regulations;
- j) Mitigation of soil vapors (if required);
- k) Procedures for proper disposal of contaminated materials (if required); and
- l) Monitoring, reporting, and regulatory oversight arrangements.

The SMP shall also be submitted to SCCDEH or equivalent regulatory agency for review and approval prior to issuance of grading permits and commencement of cleanup activities.

A No Further Action letter (or equivalent assurance) from SCCDEH or equivalent regulatory agency documenting completion of cleanup activities shall be provided to the PBCE Supervising Environmental Planner prior to issuance of a grading permit.

- 3) Mitigation Measures HAZ-1.3: Dewatering During Construction/ Operation: A groundwater management and dewatering plan shall be developed to 1) protect construction workers if groundwater is encountered, and 2) meet the permit requirements if groundwater requires treatment prior to discharge to either the sewer system or disposal at an appropriate facility following characterization of the groundwater contaminants. Characterization of the contaminants would be performed in accordance with the SMP and requirements of the California Regional Water Quality Control Board.

The SCCDEH shall be notified of any groundwater contaminants encountered at the site. The SCCDEH would oversee implementation of the groundwater management and dewatering plan. If regular dewatering of the proposed subgrade parking garage is required, the collected water shall also be discharged to the sanitary sewer system through a discharge permit issued by City of San José Department Environmental Services.

- 4) Mitigation Measures HAZ-1.4: Soil Vapors Controls for Residential Use: In the event elevated levels of soil vapors are found during testing under MM HAZ-1.1, the project applicant shall either remediate contaminated soils (e.g., in-situ remediation, or excavation and off-site disposal) and/or implement institutional and engineering controls to ensure that any potential added health risks to construction workers, maintenance and utility workers, site users, residents, and the general public as a result of hazardous materials contamination are reduced to acceptable levels, as required by the SCCDEH and/or other regulatory oversight agency.

Institutional and engineering controls employed on the site may include placement of new fill, pavement, or buildings over any contaminated soils and groundwater, passive and active ventilation systems, vapor barriers, and/or adoption of deed restrictions.

- 5) Mitigation Measures HAZ-1.5: Guidelines and measures for health and safety during construction activities, soil management, groundwater management, addressing vapor intrusion issues, and construction activities (unanticipated subsurface conditions) shall be addressed in the Site Management Plan (see MM HAZ-1.2) and reviewed and approved by SCCDEH (or equivalent regulatory

agency). Final approval of the SMP indicating that the entire site is suitable for residential land uses shall be issued by SCCDEH (or equivalent regulatory agency) and copied to the City of San José, prior to issuance of any grading permit.

In the event institutional or engineering controls are required for soil vapors, a No Further Action letter (or equivalent assurance) from SCCDEH (or equivalent regulatory agency) documenting completion of remediation activities and/or engineering controls shall be provided to the Supervising Environmental Planner of the City of San José Department of PBCE and the Compliance Officer/Hazardous Materials Specialist of the City of San José Department of Environmental Services prior to issuance of any Certificate of Occupancy (temporary or final) for the proposed residences.

All measures shall be printed on all construction documents, contracts, and project plans prior to issuance of grading permits.

v. *Noise.*

- 1) Mitigation Measures NOI-1.1: If piles are utilized for project construction, the project applicant shall ensure that only drilled piers or rammed aggregate piers will be used.

mm. **Revocation, Suspension, Modification.** This Special Use Permit may be revoked, suspended or modified by the Planning Director, or by the Planning Commission on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20. 100, Title 20 of the San José Municipal Code it finds:

- i. A violation of any conditions of the Special Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
- ii. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
- iii. The use as presently conducted creates a nuisance.

**APPROVED** and issued on this **15<sup>th</sup> day of March, 2017.**

Harry Freitas, Director  
Planning, Building and Code Enforcement

Deputy